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Supreme Court, U.S.
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No.

In the
Supreme Court of the United States
October Term, 1995

R. RAY SINGLETON,

Petitioner,

v.

CHRIST THE SERVANT EVANGELICAL LUTHERAN CHURCH, and THE ST. PAUL AREA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,

Respondents.

JEREMIAH OLSON,

Petitioner,

v.

LUTHER MEMORIAL CHURCH, and THE ST. PAUL AREA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Establishment Clause of the United States Constitution precludes judicial review by a state trial court of claims relating to the discharge of a pastor in an action for breach of contract.

2. Whether the Establishment Clause of the United States Constitution precludes judicial review by a state trial court of claims relating to the discharge of a pastor in actions for wrongful discharge, promissory estoppel, breach of implied covenant of good faith and fair dealing, intentional infliction of emotional distress, tortuous interference with contract, defamation, violation of the state "Whistleblower Statute," and negligent hiring and retention.

RULE 29.6 LIST

The parent of the St. Paul Area Synod of the Evangelical Lutheran Church in America is the Evangelical Lutheran Church in America.

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PETITION FOR WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

Petitioners pray that a writ of certiorari issue to review the judgment, opinion, and orders of the Minnesota Court of Appeals which affirmed the summary judgments of the District Court for Ramsey County, Minnesota.

OPINIONS BELOW

In R. Ray Singleton v. Christ the Servant Evangelical Lutheran Church and St. Paul Area Synod of the Evangelical Lutheran Church in America (hereinafter referred to as Singleton), the District Court for Ramsey County, Minnesota granted Respondent's Motions for Summary Judgment in an opinion dated January 9, 1996, which is included in the Appendix as Exhibit A. The Minnesota Court of Appeals affirmed the District Court's Opinion and dismissed this action in an opinion filed January 9, 1996, which is included in the Appendix as Exhibit B. The Supreme Court of Minnesota denied Petitioner's Petition for Review in an Order dated March 19, 1996, which is included in the Appendix as Exhibit C.

In Jeremiah Olson v. Luther Memorial Church, a Minnesota Religious Corporation, and the St. Paul Area Synod of the Evangelical Lutheran Church in America, (hereinafter referred to as Olson), the District Court for Ramsey County, Minnesota granted Respondent's Motions for Summary Judgment in an opinion dated June 27, 1995, which is included in the Appendix as Exhibit D. The Minnesota Court of Appeals affirmed the District Court's Opinion and dismissed this action in an opinion filed March 19, 1996, which is included in the Appendix as Exhibit E. The Supreme Court of Minnesota denied Petitioner's Petition for Review in an Order dated March 19, 1996, which is included in the Appendix as Exhibit F.

STATEMENT OF JURISDICTION

The Minnesota Court of Appeals affirmed the District Court's decision in Singleton in an opinion filed January 9, 1996, which is included in the Appendix as Exhibit B. The Supreme Court of Minnesota denied Petitioner's Petition for Review in an Order filed on March 19, 1996, which is included in the Appendix as Exhibit C. This Petition for Certiorari is filed within ninety (90) days of that date. This court has jurisdiction to review the judgment of the Minnesota Court of Appeals by a writ of certiorari pursuant to 28 U.S.C. §1257.

The Minnesota Court of Appeals affirmed the District Court's decision in Olson in an opinion filed February 20, 1996, which is included in the Appendix as Exhibit E. The Supreme Court of Minnesota denied Petitioner's Petition for Review in an Order filed on March 19, 1996, which is included in the Appendix as Exhibit F. This Petition for Certiorari is filed within ninety (90) days of that date. This court has jurisdiction to review the judgment of the Minnesota Court of Appeals by a writ of certiorari pursuant to 28 U.S.C. §1257.

Pursuant to Rule 12(4) these two judgments sought to be reviewed on a writ of certiorari are directed to the same court and involve identical or closely related questions. Petitioners are represented by the same counsel, Respondent St. Paul Area Synod of the Evangelical Lutheran Church in America is represented by the same counsel. The decision in Olson by the Minnesota Court of Appeals was primarily based upon the Court's ruling in Singleton, and the State of Minnesota Supreme Court denied review of both cases on March 19, 1996.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment of the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment of the United States Constitution provides:

> No person shall...be deprived of life, liberty, or property, without due process of law....

The Fourteenth Amendment of the United States Constitution, in relevant part, provides:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Singleton

In 1987, Respondent Christ the Servant Evangelical Lutheran Church voted to "call" Petitioner Singleton as their pastor. The employment relationship was confirmed by a "Letter of Call" of the same date. The Constitution of Christ the Servant Evangelical Lutheran Church in effect at the time of call in 1987 provided that the call constituted a "permanent relationship," and that if Christ the Servant Evangelical Lutheran Church desired to terminate that relationship, it could be terminated only for seven (7) stated causes, following a specific formal procedure.[1]

On December 21, 1993, the Church Council of Respondent Christ the Servant Evangelical Lutheran Church recommended a budget reducing Petitioner Singleton's compensation by $16,000.00 per year. On January 10, 1994, the Congregation President of Christ the Servant Evangelical Lutheran Church asked Petitioner Singleton to resign.[2]

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[1] The seven (7) stated causes for termination were:

1. Death of the pastor or the dissolution of the congregation;
2. Resignation of the pastor;
3. Attainment by the pastor of the age of seventy (70) years, after which time pastor service may be extended from year to year by a two-thirds (K) vote at a congregational meeting;
4. Disqualification of the pastor through discipline;
5. Physical or mental disability of the pastor;
6. Continued neglect of duty; or
7. Inability to conduct the pastoral office efficiently in this congregation in view of local conditions, without reflection on the moral and spiritual character of the pastor.

[2] Petitioner Singleton began hemorrhaging and experiencing elevated blood pressure and bleeding to such a degree that he was not able to respond to this request for his resignation. Petitioner Singleton

Later that month, Respondent Christ the Servant Evangelical Lutheran Church approved a budget that included a 1994 salary for Petitioner Singleton in the amount of $3,368.00.

Although Petitioner Singleton sought assistance from Respondent St. Paul Area Synod of the Evangelical Lutheran Church in America, pursuant to the Synod Constitution, the Synod did not assist Petitioner Singleton, but rather aided in his termination. Subsequently, in April 1994, Petitioner Singleton brought suit in Ramsey County District Court against both the Church and the Synod asserting a claim for breach of contract. As additional causes of action, Petitioner also asserted wrongful discharge, promissory estoppel, breach of implied covenants of good faith and fair dealing, intentional infliction of emotional distress, tortuous interference with contract, and defamation.

On April 28, 1995, the District Court granted summary judgment in favor of the Church and Synod on all counts. On January 9, 1996, this decision was affirmed by the Minnesota Court of Appeals and the State of Minnesota Supreme Court denied review in an Order filed on March 19, 1996.

Olson

Petitioner Olson began his employment as assistant pastor of Respondent Luther Memorial Church in August 1990 pursuant to a "Letter of Call" in a "mutual relationship and commitment without limitation." Difficulties arose between Petitioner Olson, the senior pastor of Respondent Luther Memorial Church, and the Respondent St. Paul Area Synod of the Evangelical Lutheran Church in America. There was discussion of termination of Petitioner Olson. The

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has been emotionally and physically unable to return to work since that date.

Constitution of Respondent Luther Memorial Church provided a formal procedure for this termination.[3]

Respondent St. Paul Area Synod was pledged to uphold that Constitution. At the Annual Meeting of the Church on October 18, 1992, a resolution to eliminate Petitioner Olson's position was presented. The vote to accept the resolution and terminate Petitioner's position was 114 yes to 102 no and Petitioner Olson was terminated. Contrary to the provisions of the Church Constitution, this did not constitute the two-thirds majority vote necessary for termination of Petitioner Olson.

Additional provisions of the Constitutional procedure for termination were not followed. In fact, none of the procedure as set forth below was followed. The Respondent St. Paul Area Synod of the Evangelical Lutheran Church in America had knowledge of and assisted in the termination, in violation

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[3] Subsection d(3) provides the procedure for termination of a pastor. It provides the matter shall first be discussed with the pastor and if this does not resolve the issue, the synod bishop shall be notified and a reasonable period of time shall be allowed for the pastor to be called elsewhere. If the pastor is not called elsewhere, the congregation may request the pastor's resignation. If the pastor refuses, the congregation shall have the right to terminate the service of the pastor, in which case the following procedure is observed:

1. reasons for demanding the pastor's resignation must be stated in writing and duplicate copies given to the Synod pastor and bishop at least two weeks before the meeting at which action is contemplated.
2. a meeting of the congregation shall be called by its chair, or if he/she refuses, it shall be publicly announced in due time; at the meeting fair consideration shall be given to all parties concerned and discussion shall be limited to the points previously stated in writing. The synod bishop presides.
3. the synod bishop shall then call for a vote by ballots to decide whether or not the pastor's services shall be terminated in the light of this discussion. If two-thirds (K) of the votes cast, favors such action, the services of the pastor in the congregation shall be concluded within ninety (90) days after this meeting.

of its own Constitution and the Constitution of Luther Memorial Church. After the Synod declined to correct the situation, Petitioner Olson brought suit in Ramsey County District Court against both the Church and Synod for breach of contract. He also asserted claims for wrongful discharge, promissory estoppel, tortuous interference with contract, breach of implied covenants of good faith and fair dealing, defamation, intentional infliction of emotional distress, violation of the State "Whistleblower Statute," and negligent hiring and retention.

On June 27, 1995, Ramsey County District Court granted summary judgment in favor of the Respondents on all counts. On February 20, 1996, this decision was affirmed by the Minnesota Court of Appeals and the State of Minnesota Supreme Court denied review in an Order filed on March 19, 1996.

REASONS FOR GRANTING THE WRIT

The question before the Court is whether the employment contracts of a church are enforceable. The corollary question is whether clergy have the same right of protection as employees of a secular entity when a religious corporation breaches the procedural requirements of its own constitution.

The Court of Appeals decided that a pastor may never bring a civil action for breach of contract to enforce the procedural obligations of a church contained in its own constitution. The Court of Appeals based its decisions in both cases on the Establishment Clause of the United States Constitution. Without the assistance of the Court, churches will be free to violate public policy and discharge their clergy without having to follow the procedures they themselves have established.

This result is contrary to the prior rulings of this Court. It is also contrary to the decisions of many other state courts of last resort.

The issue of the trial court's jurisdiction over matters involving clergy in the State of Minnesota is timely and pressing. This Court is now considering a Petition for Writ of Certiorari by the Plaintiffs in Basich v. Board of Pensions, Evangelical Lutheran Church in America, 540 N.W.2d 82 (Minn. App. 1985). Application of this Court's decision must be corrected in the State of Minnesota.

I. THE MINNESOTA STATE COURT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE RELEVANT DECISIONS OF THIS COURT.

A. THIS COURT HAS ESTABLISHED A "NEUTRAL PRINCIPLES" DOCTRINE

The Court of Appeals held that the Establishment Clause precludes judicial review of a pastor's breach of contract claim because review would cause excessive entanglement in the governance of the Church. B-7. The Court of Appeals reasoned that pursuant to Jones v. Wolf, 443 U.S. 595 (1979), the "neutral principles" approach is limited to church property and membership disputes. B-7. These holdings, and the reasoning upon which they are based, is incorrect.

The Establishment Clause of the First Amendment guards against "excessive entanglement" by the government with the free exercise of religion. Lemon v. Kurtzman, 403 U.S. 602, 614 (1971). However, the First Amendment prohibits entanglement in areas of religious doctrine, but not necessarily in the areas of tort or contract law. These two cases involve no matter of doctrine and are within the jurisdiction of the civil court.

The Court of Appeals held that the Establishment Clause mandates that questions concerning the employment of clergy never be reveiwed. This is not correct. The Establishment Clause prohibits inquiry only into certain areas: areas of religious doctrine, subjective interpretations, or examination of the individual's qualifications or abilities as a pastor. See, e.g., Lewis v. 7th Day Adventist Lake Region Conf., 978 F.2nd 940 (6th Cir. 1992), In Young v. N. Ill. Conf. of United Methodist Church, 21 F.3rd 184 (7th Cir. 1994), Natal v. Christian and Missionary Alliance, 878 F.2nd 1575 (1st Cir. 1989), Kaufmann v. Sheehan, 707 F.2d 355 (8th Cir. 1983), Powell v. Stafford, 859 F.Supp. 1343 (D. Colo. 1994).

In Serbian Eastern Diocese v. Milivojevich, 426 U.S. 696 (1976), the Court held that matters of organization of government of a church and purely religious controversies are not the proper subject of court inquiry. Milivojevich, at 713. The Court stated:

> The First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchial polity, but must accept such decisions as binding on them in their application to the religious issues of doctrine or polity before them.

Milivojevich, at 709.

Milivojevich and its progeny do not prohibit review of all employment matters concerning a church's pastor. Two years after it decided the Milivojevich case, the Court held that Milivojevich is not a bar to purely secular disputes between third parties and a church in which fraud, breach of contract, or statutory violations are alleged. General Council on Fin, Etc. v. Superior Court, 439 U.S. 1355,1374 (1978).

In follow-up to Milivojevich, the "neutral principles" doctrine was set forth in Jones v. Wolf, 443 U.S. 595 (1979).

The Court in Jones emphasized that Milivojevich only requires that if interpretation of the religious institution's documents would require the Court to resolve a religious controversy, then the Court must defer to the "authoritative ecclesiastical body" of the Church. Jones at 605. However, so long as examination of documents such as the church constitution do not involve consideration of doctrinal matters (ritual, liturgy of worship, or tenants of faith), a State is constitutionally entitled to adopt "neutral principles of law as a means of adjudicating a church property dispute." Ibid.

The State of Minnesota adopted the "neutral principles" doctrine of Jones in Piletich v. Deretich, 328 N.W.2nd 696 (Minn. 1983). In the instant cases the Court of Appeals held that the "neutral principles" approach has been adopted by the Minnesota Supreme Court "only to resolve church property and membership disputes". B-10. Piletich does not so hold. Piletich involved a church property and membership dispute, and the Supreme Court held that the "neutral principles" approach could be applied to that dispute. Piletich, at 701. However, this is not the same as saying that the "neutral principles" approach can only be applied to such disputes.

A full reading of Piletich shows that its holding is not as limited as it is set forth by the Court of Appeals. After making its ruling, the Piletich Court stated, "A brief discussion of our prior decisions in this area illustrates their compatibility with the neutral principles of law approach outlined above." Id. The Court then went on to discuss prior case law which supported its ruling, including Blauert v. Schupmann, 63 N.W.2d 578 (Minn. 1954) (involving termination of a pastor and control of church property), which it cites to endorse the "willingness by the Court to enforce the contractual agreements of the parties". Piletich, at 702.

The Court of Appeals stated that Blauhert is of no precedential value because it was decided before Piletich and Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696

(1976). B-10. This conclusion is not correct. Piletich, decided after Milivojevich, incorporated Blauhert into its rationale. A full and complete reading makes it clear that Blauhert remains good law and that the interpretation by the Court of Appeals of Piletich is incorrect.

In Piletich, the Court found that the church was not hierarchial with respect to resolution of an intra-congregational dispute over local property or membership qualifications because the church constitutional documents put control of those issues into the hands of the local church and since the Court did not have a doctrinal matter before it, nor a matter committed to adjudication by the highest tribunal in a hierarchial church (as in Milivojevich), and the issue could be determined by the documents of the local church, the First Amendment did not bar resolution of the issue.

B. NEUTRAL PRINCIPLES DOCTRINE ALLOWS THE STATE OF MINNESOTA TO RECOGNIZE A BREACH OF CONTRACT CLAIM BY A PASTOR AGAINST A CHURCH

Other courts have expanded the "neutral principles" approach beyond property disputes, and the State of Minnesota has a valid basis for doing so also. In Minker v. Baltimore Annual Conf., 894 F.2nd 1354 (D.C. Cir. 1990), a pastor filed a complaint against his church for age discrimination and breach of contract. In compliance with Milivojevich, the Minker Court found that it could not resolve issues of religious doctrine or polity and therefore could not get into subjective issues such as age discrimination. Minker, at 1358. However, citing Jones v. Wolf, supra, the Minker Court held that it *could* interpret positions of religious documents involving property rights and other non-doctrinal matters as long as the analysis could be done in purely secular

terms. Ibid. Holding that a contract of a church is enforceable in a civil court, the Court held that it "may always resolve contracts governing the manner in which churches own property, hire employees, or purchase goods," Ibid, citing Watson v. Jones, 80 U.S. (13 Wall 679,714 1871). That is, the Minker Court held that while it could not look at the suitability of the Plaintiff for the pastorship, it could determine whether an alleged contract existed, and, as the suit sought money damages and not reinstatement of the pastor, review did not constitute excessive entanglement. Minker, at 1360-1361.

Although the Minnesota Court rejected the Pastor's breach of contract claim in Black v. Synder, 471 N.W.2nd 715 (Minn. App. 1991), it did so because the Plaintiff's Claim was "fundamentally connected to issues of church doctrine and governance." Black, at 720. In Black, the congregation followed correct church procedure for termination of the pastor's call and undertook the discipline process outlined in Chapter 20 of the ELCA constitution relating to the issue as to whether or not she was discharged for "inability to conduct her ministry effectively." Ibid.

The question of "inability to conduct ministry effectively" is just the type of subjective question involving inquiry into church doctrine and governance prohibited by Milivojevich. However, in the instant cases, no such subjective inquiry is required. Here, the claim are that the Church's Constitution and procedure were not followed. That is the essential issue at stake. In line with Piletich and its related cases, such an inquiry may be made.

The Black Court cited the Minker decision for the proposition that a pastor's breach of contract claim that does not necessarily entangle the court in matters of church doctrine would not be outside of the Court's jurisdiction. Black, at 720. The Court stated that Minnesota's decisional law relating to breach of contract and defamation are content

neutral and that the Free Exercise Clause does not prohibit their application to most employment relationships of religious organizations. Ibid, at 719. Therefore, there is sufficient Minnesota case law to support Plaintiff's claims.

C. NEUTRAL PRINCIPLES DOCTRINE ALLOWS THE STATE OF MINNESOTA TO RECOGNIZE TORT CLAIMS BY A PASTOR AGAINST A CHURCH

The Court of Appeals was also incorrect in rejecting Petitioners' tort claims. In Rayburn v. General Conf. of 7th Day Adventists, 772 F.2nd 1164 (4th Cir. 1985), the plaintiff, denied a pastoral position, brought an action against the church charging racial and sexual discrimination. The Court held that application of the Civil Rights Act of 1964 would cause excessive entanglement with church authority and restrict the church's free choice of its leaders, issues involving spirituality and guidance of the Holy Spirit. Rayburn, at 1170. However, the Rayburn Court went on to state that "churches are not above the law. They may be held liable for their torts and upon their contracts. Employment decisions that do not involve the church's spiritual functions may be reviewed." Rayburn, at 1171.

Also, in Drevlov v. Lutheran Church, Missouri Synod, 991 F.2nd 468 (8th Cir. 1993), a pastor filed a complaint against the Synod for libel, negligence, and intentional interference with his legitimate expectancy of employment. The Drevlov Court held that personnel decisions are protected from civil court interference where the court would be required to interpret and apply religious doctrine or ecclesiastical law. However, the First Amendment does not protect the employment decisions of religious organizations that do not involve religious beliefs or procedures or the individual's fitness as a pastor. Drevlov, at 471-472.

II. THE STATE OF MINNESOTA COURT OF LAST RESORT HAS DECIDED AN IMPORTANT FEDERAL QUESTION IN A WAY THAT CONFLICTS WITH THE DECISIONS OF OTHER STATE COURTS OF LAST RESORT.

Minnesota's restricted interpretation of the Jones v. Wolf "neutral principles" approach conflicts with the rulings of many other state courts. For example, in Feldbin v. Temple Beth-el of Manhatten, 620 N.Y.S.2nd 113 (A.D. 2 Dept. 1994), the plaintiff's contract as rabbi of the Defendant Temple was not renewed at a special meeting of members. The Court held that failure to renew the contract could be reviewed, and was to be judged in terms of whether the Defendant's Constitution and Bylaws were followed. Feldbin, at 114.

In Fellowship Tabernacle, Inc. v. Baker, 869 P.2nd 578 (Idaho App. 1994), when a dispute arose over a pastor's term of office, the church sought injunctive relief and the pastor claimed breach of contract. Holding that the jury was not asked to decide any ecclesiastical issues, but rather to examine the bylaws of a non-profit corporation governing its corporate affairs, the Court allowed review. The Court stated, "The issues before the District Court and jury involved an employment contract, its alleged breach, the various reasons asserted for the breach, and the damages related to the breach. Simply because a church is involved in litigation does not make it ecclesiastical." Fellowship Tabernacle, Inc., at 583.

In Bacher v. Metcalf, 611 SO.2nd 1030 (Ala. 1992), the church brought an injunctive action against its pastor and others from continuing as church officers. The Alabama Court reaffirmed that civil courts cannot adjudicate religious disputes concerning spiritual or ecclesiastical matters, but can resolve disputes concerning civil or property rights. Bacher, at 1031.

In Robinson v. Davis, 511 N.Y.S.2nd 311 (A.D. 2 Dept. 1987), a pastor sought to enjoin his congregation from holding

a meeting for the purpose of dismissing him from the church. The meeting was held and the vote to dismiss the pastor upheld, in that the Court found that the church had followed the proper procedure. Robinson, at 312.

There are additional cases holding that the Court will interfere to protect a pastor in his or her employment when the relationship with the church is such as to confer a property right, if the dispute involves purely secular issues and can be resolved by application of "neutral principles of law" without entanglement with matters of the church's faith, discipline, or doctrine. See, e.g. McElroy v. Guilfoyle, 589 A.2nd 1082, 1083-1084 (N.J. Super L. 1990), First Union Baptist Church of Alexandria v. Banks, 533 SO.2nd 1305, 1309-1310 (La. App. 3 Cir. 1988), Lily of the Valley Spiritual Church v. Sims, 523 N.E.2nd 999, 101 (Ill. App. 1 Dist. 1988), Reardon v. Lemoyne, 454 A.2nd 431-432 (N.H. 1982).

Therefore, consistent with the decisions of the United States Supreme Court, case law from other state courts of last resort makes clear that where the dispute involves non-hierarchial, non-doctrinal contract disputes, a civil court retains jurisdiction to hear the dispute. Tibbs v. Kendrick, 637 N.E.2nd 397, 402 (Ohio App. 8 Dist. 1994). Gilespie v. Elkins Southern Baptist Church, 350 S.E.2nd 715, 718 (W. Va. 1986); dispute between pastor and church over alleged wrongful discharge held to be subject to jurisdiction of civil court when church congregational in polity so that all power and authority was vested in the local congregation rather than in a hierarchial structure. The decisions by the Court of Appeals are contrary to the decisions of those other states. This Court needs to rule on this issue so that there can be uniform application throughout the United States.

III. THE COURT OF APPEALS' DECISION VIOLATES THE DUE PROCESS CLAUSE.

This Court has long recognized that the Due Process Clause protects an individual's right to have a claim heard by a court of law. See, e.g. Logan v. Zimmerman Brush Co., 445 U.S. 422, 429 (1982). When an individual's claim involves a fundamental right, an individual may be denied the right to have the claim heard only if there is "a countervailing state interest of overriding significance." Boddie v. Connecticut, 401 U.S. 371, 377 (1971); see also Ortwein v. Schwab, 410 U.S. 656, 662-63 (1973) (Douglas, J., dissenting).

The right to enforce another party's contractual obligations is a fundamental right protected by the Constitution. See, e.g. U.S. Const. Art. I, §10; cf. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 432 (1968). Thus, a state can take away an individual's right to enforce the contractual obligations of another only if the state has a compelling interest in doing so. See e.g., Boddie, 401 U.S. at 377-78; Ortwein, 410 U.S. at 663 (Douglas, J., dissenting).

No compelling interest supports the Court of Appeal's denial of Petitioners' right of access to the courts.

IV. THE COURT OF APPEALS' DECISION VIOLATES THE EQUAL PROTECTION CLAUSE.

Although this Court has often dealt with the issue of access to the courts in terms of due process, it also has recognized that the right of access is protected by the Equal Protection Clause. See, e.g., Long v. District Court, 385 U.S. 192, 193-95 (1996); Boddie v. Connecticut, 401 U.S. 371, 385-86, 387-89 (1971) (Douglas, J., concurring in the result and Brennan, J., concurring in part); Richard v. Hinson, 70 F.3d 415, 417 (5th Cir. 1995), Petition for Cert. filed, 64 U.S.L.W 3642 (March 11, 1996) (No. 95-1469). The Equal

Protection Clause "keeps governmental decisionmakers from treating differently persons who are in all relevant respects alike." Nordlinger v. Hahn, 505 U.S. 1, 10 (1992).

In evaluating an equal protection claim, this Court has held that it must first determine the proper standard to use in reviewing the classification and it must then analyze the purpose of the classification to determine whether it satisfies that standard. See e.g., United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 174 (1980). If a classification impinges upon a fundamental right, strict scrutiny is the proper level of review. See, e.g., Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 312 (1976); San Antonio Indep. Sch. Dist. v. Rodriquez, 411 U.S. 1, 16 (1973).

Here, the Minnesota Court of Appeal's interpretation of the Establishment Clause has the effect of creating two classes of employees: those who are employed by secular corporations and those employed by religious corporations. The former classification impinges upon a fundamental right--the right of Petitioners to have access to the courts to have disputes regarding their contractual rights heard. Thus, this classification can stand only if the purpose of the classification can withstand strict scrutiny. See, e.g., Murgia, 427 U.S. at 312; Rodriguez, 411 U.S. at 16. This classification cannot withstand strict scrutiny.

Under the Court of Appeal's decisions, a pastor may never bring an action to enforce the procedural obligations of a church contained in its own constitution. Without the assistance of this Court, churches will be free to violate public policy and discharge their clergy without having to follow the procedures they themselves have established. This result is a violation of the Establishment Clause and contrary to the prior rulings of this Court as well the rulings of numerous other state courts.

CONCLUSION

For the foregoing reasons, Petitioners ask this Court to grant their Petition for a writ of certiorari.

Respectfully submitted,

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APPENDIX AND ITS INDEX

A. Unpublished Order, Ramsey County District Court, April 28, 1995 ..... A-1

B. Singleton v. Christ the Servant Evangelical, 541 N.W.2d 606 (Minn. App. 1996) B-1

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STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

R. Ray Singleton,

Plaintiff,

vs.

ORDER

File No. C6-94-5824

Christ the Servant Evangelical Lutheran Church, and the Saint Paul Area Synod of the Evangelical Lutheran Church in America,

Defendants.

The above-entitled matter came on before the Honorable Kathleen Gearin, Judge of District Court on the 28th day of February, 1995 for a motions for Summary Judgment by each defendant.

Scot W. Lofthus appeared for and on behalf of the plaintiff R. Ray Singleton. Kristen Peterson LeBre appeared for and on behalf of the defendant Christ the Servant Evangelical Lutheran Church. Carole Lofness Baab appeared for and on behalf of the defendant Saint Paul Area Synod of the Evangelical Lutheran Church.

Based upon the arguments of counsel, files, records and proceedings herein the Court makes the following

ORDER:

1. The defendant Saint Paul Area Synod of the Evangelical Lutheran Church in America's Motion for Summary Judgment is hereby granted.

2. The defendant Christ the Servant Evangelical Lutheran Church's Motion for Summary Judgment is hereby granted.

3. That the attached Memorandum is make a part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: April 28, 1995

s/s
Kathleen Gearin
Judge of District Court

MEMORANDUM

The plaintiff was the pastor of Christ the Servant Evangelical Lutheran Church from 1987 to early 1994. This congregation is part of the St Paul Synod of the Evangelical Lutheran Church of America. He is suing the congregation and the synod. The defendants have challenged all of the legal claims on constitutional grounds. Alternatively, they assert that the material facts proffered by the plaintiff are not legally sufficient to support any of the separate causes of action filed against the defendants in the complaint.

The United States and Minnesota constitutions require that a court give careful scrutiny to any involving a religious entity. The reasons for this are clear. Freedom of religion is one of the basic tenets of our federal and state constitutions. Governments must not interfere with religious freedom. The judicial branch of government is prohibited from interfering with the internal affairs of religious institutions. Churches must be free to govern themselves without excessive governmental entanglement.

The hiring and firing of a pastor is one of the most important decisions that a congregation makes. In this case, the plaintiff alleges that the defendants did not follow the terms of the Synod constitution, the Church constitution, and the Letter of Call. He discusses various provisions of these document in his brief. These are religious documents governing Lutheran Church of America synods and congregations. If they are contracts, they are religious ones, not civil ones. The contract claims in this lawsuit require the courts to interpret the meaning of these documents. The Minnesota case of **Black v. Snyder, 471 N.W.2nd 723**, held that a similar breach of contract claim required court review of the church's reasons for the discharge which would involve the court in issues fundamentally connected to matters of church governance and doctrine.

The Black case also held that the-defamation claim must be dismissed because it "... would require a similar review of the church's reasons for discharging Black, an essentially ecclesiastical concern.".**(id. at 720)**. The defamation allegations in this complaint would require a similar analysis.

Even if the claims were not constitutionally barred and the plaintiff were an employee of a civil entity, most of the claims would be dismissed. The plaintiff has not given this court a legal reason why it should ignore the Minnesota Supreme Court cases which hold that Minnesota does not have a cause of action for breach of implied covenant of good faith and fair dealing. **Nordling v. Northern States Power, 478 N.W.2nd 498; Hunt v IBM Mid America Employees Fed. Credit Union, 384 N.W.2nd 853**.

The defamation claims involve statements made by members of the church, not employees of the church. This court does not believe that a church should be held liable for statements of non-employees. In light of this court's constitutional rulings, it has not allowed the claim against the synod for the "paranoid" statement of its employee.

The plaintiff has not presented particularly egregious behavior on the part of the church or the synod that would overcome the strict requirements for the tort of intentional infliction of emotional distress discussed in the **Hubbard v. United Press Int'l Inc., 330 N.w.2nd 428 (Minn Ct. 1983)**. He has not met the high standard of proof necessary in Minnesota in order for that claim to be presented to a jury.

The claim for negligent infliction of emotional distress is even weaker. That tort requires the plaintiff to be in a zone of danger of physical impact. **Stadler v. Cross, 295 N.W.2nd 552** and **Leaon V. Washington Cty., 397 N.W. 2nd 867**. Plaintiff argued only the claim for intentional infliction of emotional distress in its memorandum opposing summary judgment. (Pages 35, 36, and 37). The defamation exception to this requirement was not argued by the plaintiff. The court

can only assume that the plaintiff has chosen to proceed only on his intent theory.

All of the allegations in the complaint arose after a painful separation of a pastor from his congregation. Because this relationship is basically a religious one, this lawsuit has been dismissed.

K.G.

STATE OF MINNESOTA

IN COURT OF APPEALS

C9-95-1278

Ramsey County
District Court File No. C6945824

Willis, Judge

R. Ray Singleton,

Appellant,

Scott W. Lofthus
Sjostrom and Lofthus
807 Twelve Oaks Center
15500 Wayzata Boulevard
Wayzata, MN 55391

vs.

Christ the Servant
Evangelical Lutheran Church,

Respondent,

David P. Pearson
Kristin Peterson LeBre
Winthrop & Weinstine, P.A.
3200 MN World Trade Center
30 East Seventh Street
St. Paul, MN 55101

Saint Paul Area Synod of
the Evangelical Lutheran
Church in America,

Respondent.

Carole Lofness Baab
Teresa M. Croke
Johnson & Condon, P.A.
7235 Ohms Lane
Minneapolis, MN 55439

Filed January 9, 1996
Office of Appellate Courts

SYLLABUS

1. The First Amendment Establishment Clause precludes judicial review of claims relating to the discharge of a pastor where review would cause excessive entanglement in the governance of the church.

2. Allegedly defamatory statements relating to a pastor's duties and job performance made by church members at church meetings and by a bishop's assistant to a church official are conditionally privileged and summary judgment is appropriate in the absence of a showing of malice.

Affirmed.

Considered and decided by Schumacher, Presiding Judge, Davies, Judge, and Willis, Judge.

OPINION

WILLIS, Judge

Pastor R. Ray Singleton challenges summary judgment in favor of Church and Synod, arguing that the Establishment Clause of the United States Constitution does not bar his claims of breach of contract, promissory estoppel, wrongful discharge, breach of implied covenant of good faith and fair dealing, intentional infliction of emotional distress, and tortious interference with contract. Singleton also argues that the district court erred in granting summary judgment on his claims of defamation. We affirm.

FACTS

Christ the Servant Evangelical Lutheran Church (Church) called Ray Singleton to be its pastor. The letter of call

described certain elements of the relationship between the Church and Singleton, including the terms of a compensation package, which was subject to annual review. Financial problems and conflicts between Church members and their previous pastor regarding theological and administrative matters existed at the Church before Singleton's arrival and continued throughout his tenure as pastor. Several families left the Church because of differences with Singleton.

Conflicts within the Church heightened in late 1993. In October 1993, the Church council asked Singleton to leave a council meeting and to respond to a list of concerns. The Church formed a task force to consider remedies for the Church's financial difficulties. At the task force meetings, Church members identified general and specific aspects of Singleton's job performance as reasons certain members had left the Church and others had quit contributing financially to the Church.

Singleton communicated to the St. Paul Area Synod of the Evangelical Lutheran Church (Synod) that he wanted to pursue another call and in late December 1993 he interviewed with five other synods. The Synod communicated frequently with Singleton and with Church members throughout this period regarding Singleton's employment and problems at the Church.

On December 21, 1993, the Church council recommended a budget for 1994 that reduced Singleton's annual salary by $16,000. The Church council president drafted a report that included a request for Singleton's resignation. Singleton claims that he was physically and emotionally unable to continue his duties as pastor after receiving the council president's report on January 10, 1994 and that he was unable emotionally to formulate a response to the demand for his resignation. Approximately two weeks later, the congregation adopted a budget for 1994 that reduced the amount available for pastoral services to $3,368.

Singleton sued the Church, asserting claims of breach of contract, wrongful discharge, promissory estoppel, breach of the implied covenant of good faith and fair dealing, defamation, intentional infliction of emotional distress, and negligent infliction of emotional distress. In addition, Singleton brought claims against the Synod for tortious interference with contract, breach of the implied covenant of good faith and fair dealing, and defamation. The district court entered summary judgment in favor of the Church and the Synod on all claims. Singleton appeals.[1]

ISSUES

1. Did the district court err in determining that the Establishment Clause warranted summary judgment on Singleton's claims of breach of contract, wrongful discharge, promissory estoppel, breach of the implied covenant of good faith and fair dealing, and tortious interference with contract?

2. Did the district court err in granting summary judgment in favor of the Church and Synod on Singleton's defamation claims?

ANALYSIS

On appeal from summary judgment, this court asks whether any genuine issues of material fact exist and whether the district court erred in its application of the law. State by Cooper v. French, 460 N.W.2d 2, 4 (Minn. 1990). A reviewing court is not bound by and need not give deference to a district court's decision on a purely legal issue. Frost-

[1] Singleton does not challenge the district court's grant of summary judgment on his negligent infliction of emotional distress claim against the Church.

Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n, 358 N.W.2d 639, 642 (Minn. 1984).

I.

The Church and the Synod allege that the First Amendment to the United States Constitution prevents civil courts from reviewing Singleton's claims. The Establishment Clause of the First Amendment provides that "Congress shall make no law respecting an establishment of religion * * * ." U.S. Const. amend. I. The First Amendment applies to the states through the Fourteenth Amendment. Cantwell v. Connecticut, 310 U.S. 296, 303, 60 S. Ct. 900, 903 (1940). Under the Establishment Clause, an exercise of governmental authority is valid if it (1) has a secular purpose, (2) neither inhibits nor advances religion as its primary effect, and (3) does not create excessive entanglement between church and state. Lemon v. Kurtzman, 403 U.S. 602, 612-13, 91 S. Ct. 2105, 2111 (1971).

Whether government action causes excessive entanglement depends on the nature of the intrusion into religious administration, the character and purpose of the involved institutions, and the resulting relationship between the religious authority and government. Lemon, 403 U.S. at 615, 91 S. Ct. at 2112; Black v. Snyder, 471 N.W.2d 715, 720 (Minn. App. 1991), review denied (Minn. Aug. 29, 1991). If a claim involves core issues of ecclesiastical concern, the potential for excessive governmental entanglement precludes judicial review. Serbian E. Orthodox Diocese v. Milivojevich, 426 U.S. 696, 721-23, 96 S. Ct. 2372, 2386-87 (1976) (holding that the First Amendment barred judicial consideration of bishop's wrongful discharge claim). If the court can resolve the dispute by looking only to neutral principles of law, however, judicial review is permissible. Jones v. Wolf, 443 U.S. 595, 602-05, 99 S. Ct. 3020, 3025-26

(1979) (applying neutral principles of law analysis to church property dispute); Piletich v. Deretich, 328 N.W.2d 696, 701 (Minn. 1982) (adopting neutral principles of law analysis for "resolution of church property and membership disputes").

A. Claims of Breach of Contract, Wrongful Discharge, and Promissory Estoppel Against the Church

Singleton claims that the Church breached its contract with him and wrongfully discharged him by violating provisions of the Church's constitution and the terms of his call. He asserts specifically that, by approving the 1994 budget with a large salary decrease, the Church breached its contract with him and constructively discharged him without following its own procedures. He argues that the Church did not properly terminate his call because it did not articulate any of the six reasons for termination described in the Church's constitution. He also claims that the Church breached its contract by removing him from the Church finance committee, by holding Church council and task force meetings when he was absent, by failing to publish the 1994 budget three weeks prior to the congregational vote, and by failing to notify him properly of task force meetings. Singleton asserts that the Church's constitution and his call letter were a promise of continuing employment that he reasonably relied on to his detriment, thus raising his claim for promissory estoppel.

Courts generally refrain from considering claims that require "a searching and therefore impermissible inquiry" into church governance. Milivojevich, 426 U.S. at 723-26, 96 S. Ct. at 2387-88. In Black, this court dismissed an associate pastor's claims of breach of contract, retaliation, and violation of the whistleblower statute, reasoning that the claims

> relate specifically to factors of [Black's] appointment as associate pastor and discharge. These claims are fundamentally connected to issues of church doctrine and governance and would require court review of the church's motives for discharging Black.

471 N.W.2d at 720.

As in Black, Singleton's claims of breach of contract, wrongful discharge, and promissory estoppel relate to his appointment and discharge as a pastor and are fundamentally connected to issues of church governance. Adjudication of these claims also would necessitate inquiry into the Church's motives for proposing to decrease Singleton's salary and for taking the other actions asserted by Singleton as breaches of contract. These claims, therefore, involve strictly ecclesiastical concerns.

Singleton argues that his claims could be decided by applying neutral principles of law. The Minnesota Supreme Court has adopted the neutral principles doctrine, however, only to resolve "church property and membership disputes." Piletich, 328 N.W.2d at 701. In doing so, the court relied primarily on Jones v. Wolf, in which the Supreme Court held that a "State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." 443 U.S. at 604, 99 S. Ct. at 3026. The present case does not involve a property dispute or a membership dispute. As a result, neutral principles of law analysis is inappropriate.

Even if Minnesota law permitted a neutral principles of law analysis of a pastor's employment-related claims, scriptural and other religious references in the Church's constitution and the call letter complicate secular analysis of the procedures described in those documents. Chapter 15 of the constitution,

for example, addresses discipline of Church members and mandates that "prior to disciplinary action, reconciliation will be attempted following Matthew 18:15-17 * * *." The Church constitution also states that the Church-pastor relationship can be terminated if the pastor is disqualified on "grounds of doctrine, morality, or continued neglect of duty." Singleton's call letter discusses his spiritual obligations to the Church, including to "preach and teach the Word of God; to conduct public worship; to administer the sacraments; to provide pastoral care and leadership * * * ." Judicial review of Singleton's claims, thus, would require an evaluation of scripture, doctrine, and moral principles. This is precisely the type of searching inquiry that intrudes into church doctrine and church administrative matters and engenders a prohibited relationship between the Church and the judiciary. See Lemon, 403 U.S. at 614-15, 91 S. Ct. at 2112; Black, 471 N.W.2d at 720.

Singleton cites Minker v. Baltimore Annual Conf., 894 F.2d 1354, 1359-61 (D.C. Cir. 1990), as the legal basis for applying neutral principles of law to his breach of contract claim. In that case, the court reversed the district court's dismissal of a pastor's oral contract claim, holding that

> [a]ppellant is entitled to prove up his claim of breach of oral contract to the extent that he can divine a course clear of the Church's ecclesiastical domain.

Minker, 894 F.2d at 1361.

Singleton's reliance on Minker is misplaced. The procedural posture of Minker and the present case differ. Minker involved a motion to dismiss rather than a summary judgment motion. See id. at 1356. The court in Minker recognized that a plaintiff, despite successfully opposing a

motion to dismiss, might find it difficult to avoid summary judgment:

> It could turn out that in attempting to prove his case, appellant will be forced to inquire into matters of ecclesiastical policy even as to his contract claim. Of course, in that situation, a court may grant summary judgment on the ground that appellant has not proved his case and pursuing the matter further would create an excessive entanglement with religion.

Id. at 1360. The Minker court's speculation regarding the plaintiff's ability to prove his case using neutral principles of law applies here. Singleton cannot prove his claims without asking the court to inquire into matters of ecclesiastical policy in the Church's constitution and in his letter of call.

Additionally, other federal appellate courts have reached a contrary conclusion when faced with facts similar to those in Minker. In Lewis v. Seventh Day Adventists Lake Region Conf., 978 F.2d 940 (6th Cir. 1992), the court of appeals affirmed dismissal of a minister's breach of contract, promissory estoppel, and related claims on Establishment Clause grounds. The court held that, even when the claims are based on misapplication of church procedures and laws, "civil courts may not intervene." Id. at 942-43. Similarly, the First Circuit affirmed dismissal of a wrongful discharge claim, concluding that

> [b]y its very nature, the inquiry * * * into the circumstances of [appellant's] discharge plunges an inquisitor into a maelstrom of Church policy, administration, and governance.

Natal v. Christian & Missionary Alliance, 878 F.2d 1575, 1578 (1st Cir. 1989). Finally, the Sixth Circuit concluded that the neutral principles doctrine

> has never been extended to religious controversies in the areas of church government, order and discipline, nor should it be. The claim here relates to appellant's status and employment as a minister of the church. It therefore concerns internal church discipline, faith, and organization, all of which are governed by ecclesiastical rule, custom, and law.

Hutchison v. Thomas, 789 F.2d 392, 396 (6th Cir.) (citing Kaufman v. Sheehan, 707 F.2d 355, 358 (8th Cir. 1983)), cert. denied, 479 U.S. 885, 107 S. Ct. 277 (1986).

At oral argument, Singleton asserted that Blauert v. Schupmann, 241 Minn. 428, 63 N.W.2d 578 (1954), permits this court to apply a neutral principles of law analysis. While the court in Blauert addressed the district court's determination that the congregation had legally discharged its pastor, the case dealt primarily with church property and membership disputes. 241 Minn. at 434-38, 63 N.W.2d at 583-85. Blauert also preceded the Supreme Court's decision in Milivojevich, which held that the First Amendment barred a bishop's wrongful discharge claim. 426 U.S. at 721-23, 96 S. Ct. at 2386-87. Further, Blauert preceded Piletich, in which the Minnesota Supreme Court limited its acceptance of the neutral principles of law doctrine to cases involving church property or membership disputes. Piletich, 328 N.W.2d at 701. We do not believe Blauert allows us to review Singleton's claims.

The district court properly granted summary judgment in favor of the Church on Singleton's claims of breach of contract, wrongful discharge, and promissory estoppel.

B. Claims of Breach of Implied Covenant of Good Faith and Fair Dealing Against the Church and the Synod

Singleton claims that the Church and the Synod breached the covenant of good faith and fair dealing established by his employment relationship with the Church. Minnesota law, however, does not recognize implied covenants of good faith and fair dealing in employment contracts. Hunt v. IBM Mid Am. Employees Fed. Credit Union, 384 N.W.2d 853, 858 (Minn. 1986); Spanier v. TCF Bank Sav., 495 N.W.2d 18, 21 (Minn. App. 1993), review denied (Minn. Mar. 22, 1993). In the absence of a contract regarding grounds for discharge, employees serve at the will of their employers. Spanier, 495 N.W.2d at 21.

In refusing to acknowledge the existence of implied covenants of good faith and fair dealing in Minnesota employment law, the supreme court recognized the difficulties of an inquiry into the reasons for terminating an employee:

> [T]o imply into each employment contract a duty to terminate in good faith would seem to subject each discharge to judicial incursions into the amorphous concept of bad faith. We are not persuaded that protection of employees requires such an intrusion on the employment relationship or such an imposition on the courts.

Hunt, 384 N.W.2d at 858 (quoting Parnar v. Americana Hotels, 652 P.2d 625, 629 (Haw. 1982)). Because an action

for breach of the implied covenant of good faith and fair dealing has been found so invasive as to preclude judicial review of a secular employer's actions, we conclude that judicial inquiry into Singleton's implied covenant claims would excessively entangle the court in the internal affairs of the Church and the Synod.

As a matter of law, the district court properly rejected Singleton's claims of breach of the implied covenant of good faith and fair dealing against the Church and the Synod.

C. Claim of Intentional Infliction of Emotional Distress Against the Church

Singleton claims that the Church's conduct and statements by Church members caused him severe emotional distress. Specifically, Singleton points to several statements regarding an intention to remove him from his position as pastor, several statements about his job performance, his removal from several Church committees, submission of written "concerns" about his job performance, and the holding of Church meetings without informing him or members of his family.

In a claim for intentional infliction of emotional distress, a plaintiff must establish that (1) the conduct was extreme and outrageous, (2) the conduct was intentional or reckless, (3) it caused emotional distress, and (4) the distress was severe. Hubbard v. United Press Int'l, 330 N.W.2d 428, 438-39 (Minn. 1983). To satisfy the second prong of the test, the actor must intend to cause severe emotional distress or know that it is at least highly probable that emotional distress will result. Dornfeld v. Oberg, 503 N.W.2d 115, 119 (Minn. 1993). To determine whether the Church intended to cause Singleton emotional distress, a court would need to review the motivations for the Church's actions. The First Amendment prohibits judicial inquiry into motivations for a Church's pastoral employment decisions. See Black, 471 N.W.2d at

720 (dismissing a claim that was "fundamentally connected to issues of church doctrine and governance and would require court review of the church's motives for discharging ([pastor]").

Singleton's claim for intentional infliction of emotional distress also fails because the Church's actions were not extreme and outrageous. Conduct is extreme and outrageous if it is "so atrocious that it passes the boundaries of decency and is utterly intolerable to the civilized community." Hubbard, 330 N.W.2d at 439 (citations omitted). Intentional infliction of emotional distress claims are "sharply limited to cases involving particularly egregious facts." Id. None of the Church's actions "passes the boundaries of decency" or is "utterly intolerable to the civilized community." We agree with the district court's conclusion that Singleton "has not met the high standard of proof necessary in Minnesota" to present to the jury his intentional infliction of emotional distress claim.

The district court correctly applied the law in granting summary judgment in favor of the Church on Singleton's claim of intentional infliction of emotional distress.

D. Claim of Tortious Interference with Contract Against the Synod

Singleton claims that the Synod tortiously interfered with his contract with the Church by communicating certain information to members of the Church council and by failing to discipline the Church for violation of the Synod's constitution. An interference with contract claim requires (1) a contract, (2) knowledge of the contract by the alleged wrongdoer, (3) intentional procurement of a breach of the contract, (4) no justification for the interference, and (5) damages. Kjesbo v. Ricks, 517 N.W.2d 585, 588 (Minn. 1994). Interference with a contract is justified if the conduct is reasonable in light of all the circumstances of the case. Id.;

Potthoff v. Jefferson Lines, 363 N.W.2d 771, 776 (Minn. App. 1985).

To analyze the justification element of this claim, the court would have to consider whether the bishop and his assistants acted reasonably. This analysis would require a review of the duties of the bishop and his assistants, matters of church governance within the Synod, the relationship between the Church and the Synod, the Synod's obligation to provide pastoral care, the Synod's obligation to discipline its member churches for violations of the Synod's constitution, and the bishop's authority to settle disputes within the Synod's member churches. These matters are ecclesiastical concerns not reviewable under the First Amendment. See Milivojevich, 426 U.S. at 721-23, 96 S. Ct. at 2386-87 (dismissing a bishop's wrongful discharge claim because it involved ecclesiastical issues that were barred from review by the First Amendment); Black, 471 N.W.2d at 720 (dismissing a discharge-related claim due to the "prohibition against litigating matters at the core of a church's religious practice * * *"). We conclude, therefore, that the district court properly granted the Synod's summary judgment motion on Singleton's claim of tortious interference with contract.

II.

A. Claim of Defamation Against the Church

The district court granted summary judgment to the Church on Singleton's claim of defamation, holding that the constitutional prohibition against excessive entanglement precluded review. The court also stated that the Church could not be held liable because the allegedly defamatory statements were made by members, rather than employees, of the Church. Because we hold that the statements were conditionally privileged and that Singleton failed to show malice, we do not

reach the constitutional or agency issues on which the trial court based its decision.

Singleton alleges that members of the Church defamed him by making statements that harmed his reputation and his *ability to obtain another call.* Singleton identifies 10 statements that he claims were defamatory:

> (1) An unidentified person at a task force meeting stated that Singleton did not attend a wedding rehearsal;
>
> (2) an unidentified person at a task force meeting stated that Singleton made a false statement regarding a Church member's attendance of a retirement party;
>
> (3) an unidentified person at a task force meeting stated that Singleton insisted that his salary should be paid before the Church's mortgage;
>
> (4) a Church member stated at a task force meeting that Singleton failed to visit in the hospital a woman with cancer;
>
> (5) a Church council member stated at a task force meeting that Singleton did not respond to her telephone call regarding an infant's death;
>
> (6) a Church member stated at a task force meeting that Singleton breached his duty of confidentiality by telling others of the member's abusive father and by stating that the member had a problem with authority;

(7) an unidentified person stated at the task force meeting that Singleton charged $500 for conducting a wedding;

(8) a Church member stated at a task force meeting that Singleton received eleven weeks of vacation;

(9) a Church youth committee member stated at a Church council meeting that Singleton had jeopardized the Church's insurance policy by taking the Church bus to camp; and

(10) a Church youth committee member stated at a Church council meeting that when Singleton was out of town he returned for funerals only of friends.

A statement is defamatory if (1) it is communicated to someone other than the plaintiff, (2) it is false, and (3) it tends to harm the plaintiff's reputation and tends to lower the plaintiff in the estimation of the community. Stuempges v. Park, Davis & Co., 297 N.W.2d 252, 255 (Minn. 1980) (citing Restatement (Second) of Torts §§ 558-559 (1977); W. Prosser, Handbook of the Law of Torts § 111 at 739 (4th ed. 1971)). A communication is conditionally privileged, however, if it is "made upon a proper occasion, from a proper motive, and * * * based upon reasonable or probable cause." Id. at 256-57 (quoting Hebner v. Great N. Ry., 78 Minn. 289, 292, 80 N.W.2d 1128, 1129 (1899)). The supreme court explained:

> The doctrine of privileged communication rests upon public policy considerations. * * * [T]he existence of a privilege results from the court's determination that statements made in particular contexts or on certain occasions should be encouraged despite the risk that the statements might be defamatory.

Lewis v. Equitable Life Assur. Soc., 389 N.W.2d 876, 889 (Minn. 1986).

Whether a particular communication is conditionally privileged presents a question of law. Id. If a defendant establishes that a conditional privilege exists, the burden shifts to the plaintiff to show that the defendant abused the privilege. Stuempges, 297 N.W.2d at 257. The plaintiff meets this burden by proving malice, which requires a showing that the defendant "made the statement from ill will and improper motives, or causelessly and wantonly for the purpose of injuring the plaintiff." Id. (quoting McKenzie v. William J. Burns Int'l Detective Agency, 149 Minn. 311, 312, 183 N.W. 516, 517 (1921)). Although the jury normally determines whether a defendant abused its privilege, summary judgment is appropriate when "[t]he trial court record shows no facts which would lead to the conclusion that [the defendant] acted against [the plaintiff] out of malice or ill will." Harvet v. Unity Medical Ctr., 428 N.W.2d 574, 579 (Minn. App. 1988).

The supreme court has held that statements made by an employer when investigating employee misconduct are conditionally privileged. McBride v. Sears, Roebuck & Co., 306 Minn. 93, 97, 235 N.W.2d 371, 374 (1975). The court explained that "the employer has an important interest in protecting itself and the public against dishonest or otherwise harmful employees." Id. Further, in Gunufson v. Onan Corp., this court affirmed summary judgment in favor of a

corporation where employees made allegedly defamatory statements at a management meeting regarding the reason for plaintiff's dismissal. 450 N.W.2d 179, 183 (Minn. App. 1990). The court found that the communications were within the conditional privilege and were not actionable without proof of malice. Id.

The allegedly defamatory statements in this case, all of which the record reflects were communicated at task force meetings or Church council meetings and dealt with Singleton's actions as a pastor, fall within the Church's conditional privilege. The record reveals no facts that would lead to the conclusion that Church members acted against Singleton out of the kind of malice or ill will that defeats the privilege. As a result, there is no question of material fact concerning the existence of malice. We conclude, therefore, that the district court correctly granted summary judgment in favor of the Church on Singleton's defamation claim.

B. Claim of Defamation Against the Synod

The district court granted summary judgment to the Synod on Singleton's defamation claim, citing the constitutional prohibition against excessive entanglement. Because we find that the allegedly defamatory statement was conditionally privileged and that Singleton did not show malice, we do not address the constitutional issue.

Singleton asserts that he was defamed when a bishop's assistant told a Church official that Singleton was "paranoid." The record shows that the statement was made during a phone conversation in which the Church official and the bishop's assistant discussed conflicts in the Church, Singleton's position at the Church, and Singleton's compensation. Under these circumstances, we conclude that the bishop's assistant's statement falls within the conditional privilege. The record reveals no facts that would lead to the conclusion that the

bishop's assistant made the statement out of malice or ill will. There is no question, therefore, of material fact concerning the existence of malice and summary judgment in favor of the Synod was appropriate on Singleton's claim of defamation.

DECISION

The constitutional prohibition against excessive governmental entanglement with internal church affairs precludes judicial review of Singleton's claims of breach of contract, wrongful discharge, promissory estoppel, breach of implied covenant of good faith and fair dealing, tortious interference with contract, and intentional infliction of emotional distress. Additionally, the statements Singleton alleges to be defamatory were conditionally privileged, and the record does not reveal any facts indicating that the statements were made out of malice or ill will that would defeat the privilege. The district court, therefore, did not err by granting summary judgment to the Church and the Synod on all claims.

Affirmed.

Dated: January 2, 1996

s/s
Judge Bruce D. Willis

STATE OF MINNESOTA

IN SUPREME COURT

C9-95-1278

R. Ray Singleton,

Appellant,

vs.

Christ the Servant Evangelical Lutheran Church,

Respondent,

St. Paul Area Synod of the Evangelical Lutheran Church in America,

Respondent.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of R. Ray Singleton for further review be, and the same is, denied.

Dated: March 19, 1996

BY THE COURT:

s/ AM Keith

Chief Justice

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

Jeremiah Olson, File No. C6-94-8853

Plaintiff,

vs. **ORDER**

Luther Memorial Church and Saint Paul Area Synod of the Evangelical Lutheran Church in America;,

Defendants.

The above-entitled matter came on for hearing before the Hon. Allan R. Markert, Judge of the District Court, on the 16th day of May, 1995, on a motion for summary judgment by defendants Saint Paul Area Synod of the Evangelical Lutheran Church in America and Luther Memorial Church. Appearances were:

Scott W. Loftus, for and on behalf of plaintiff Jeremiah Olson;

Carole Lofness Baab, for and on behalf of defendant Saint Paul Area Synod of the Evangelical Lutheran Church; and

Thomas M. Countryman, for and on behalf of defendant Luther Memorial Church.

Based upon the arguments of counsel, files, records and proceedings herein, the Court makes the following Order:

IT IS HEREBY ORDERED:

1. That the defendant, Saint Paul Area Synod of the Evangelical Lutheran Church in America's motion for summary judgment is hereby granted.

2. That the defendant, Luther Memorial Church's motion for summary judgment is hereby granted.

3. That the attached Findings of Fact and Memorandum are made a part of this Order.

LET JUDGMENT BE ENTERED ACCORDINGLY.

BY THE COURT:

s/s
Alan R. Markert
Judge of the District Court

Dated this 27th day of
June, 1995.

CLB-61301.1

STATE OF MINNESOTA **DISTRICT COURT**

COUNTY OF RAMSEY **SECOND JUDICIAL DISTRICT**

Jeremiah Olson, File No. C6-94-8853

Plaintiff,

vs. **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND MEMORANDUM**

Luther Memorial Church and Saint Paul Area Synod of the Evangelical Lutheran Church in America;,

Defendants.

FINDINGS OF FACT AND MEMORANDUM

Plaintiff Pastor Jeremiah Olson was the assistant pastor at Luther Memorial Church from August 1990 until the congregation voted to eliminate the assistant pastor position in October 1992 due to financial shortages. Luther Memorial Church is a member of the Saint Paul Area Synod of the Evangelical Lutheran Church in America. Pastor Olson is suing the congregation and the Synod in relation to the elimination of his position at Luther Memorial. Both Luther Memorial and the Saint Paul Area Synod have challenged all of plaintiff's legal claims on constitutional grounds. Alternatively, defendants assert that the material facts asserted by plaintiff are not legally sufficient to support any of the separate causes of the action filed against the defendants.

Both the United States Constitution and the Minnesota Constitution guarantee that the government may not become excessively entangled with the free exercise of religion. In order to avoid states from becoming entangled in religious controversies, the First Amendment of the United States Constitution severely limits the role civil courts play in resolving religious disputes.

Courts strictly construe the First Amendment when determining whether a court may interfere with issues relating to a church's relationship with its pastor. Upholding the church's right to hire a pastor or fire a pastor without government interference is fundamental to the running of a church. Plaintiff alleges the defendants did not follow the Saint Paul Area Synod Constitution, the Luther Memorial Constitution or the Luther Memorial letter of call to Jeremiah Olson. All these are religious policies and documents which govern the synods and congregations of the Lutheran Church of America.

The Minnesota Court of Appeals case, Black v. Snyder, 471 N.W.2d 715, 723 (Minn. Ct. App. 1991) found a breach of contract claim against a congregation required judicial review of the church's reasoning for the discharge which would excessively entangle the court in issues fundamentally connected to matters of church goverance and doctrine. The Black decision also found that a defamation claim must be dismissed because it required a similar review of the church's reasonings for discharging the pastor which was "essentially an ecclesiastical concern." Id. at 720. For these reasons, plaintiff's claims are barred from further review by this court.

In addition to the constitutional grounds, there are also not sufficient material facts to support the separate causes of action. Minnesota has no cause of action for breach of implied covenant of good faith and fair dealings. Nordling v. Northern States Power Co., 478 N.W.2d 498; Hunt v. IBM Mid-America Employees' Fed. Credit Union, 385 N.W.2d 853.

Plaintiff has not presented evidence or facts of egregious behavior on the part of the Saint Paul Area Synod or Luther Memorial congregation that would overcome the strict requirements for an intentional infliction of emotional distress claim. Hubbard v. United Press International, Inc., 330 N.W.2d 428 (Minn. Ct. 1983).

Plaintiff was not within his zone of danger of physical impact necessary to assert a claim for negligent infliction of emotional distress. Stadler v. Cross, 295 N.W.2d 552.

On the basis of the constitutional arguments, that the employment decisions were religious in nature and the court is prohibited from interfering, in addition to plaintiff's failure to assert sufficient evidence of the individual claims, the court grants defendants Saint Paul Area Synod and Luther Memorial Church's motions for summary judgment in their entirety and dismisses plaintiff's claims.

BY THE COURT:

Dated: 6/27/95.

s/s
Judge Allen R. Markert
Second Judicial District

CLB-61310.1

This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (1994).

STATE OF MINNESOTA

IN COURT OF APPEALS

C0-95-1623

Ramsey County
District Court File No. C6-94-8853

Amundson, Judge

Jeremiah Olson, Appellant,	Scott W. Lofthus Sjostrom and Lofthus 807 Twelve Oaks Center 15500 Wayzata Boulevard Wayzata, MN 55391
vs.	
Luther Memorial Church, Respondent.	Thomas M. Countryman James J. Galman Margaret C. Galvin Jardine, Logan & O'Brien, P.L.L.P. 2100 Piper Jaffray Plaza 444 Cedar Street St. Paul, MN 55101
and	
Saint Paul Area Synod of the Evangelical Lutheran Church in America,	Carole Lofness Baab Teresa M. Croke Johnson & Condon, P.A.

Respondent.

7235 Ohms Lane
Minneapolis, MN 55439

Filed: February 20, 1996
Office of Appellate Courts

Considered and decided by Amundson, Presiding Judge, Klaphake, Judge, and Harten, Judge.

UNPUBLISHED OPINION

AMUNDSON, Judge

Appellant Jeremiah Olson challenges the district court's grant of summary judgment in favor of the church and synod. Olson argues that the district court erred in determining that the First Amendment precluded it from reviewing this case because it would involve excessive entanglement in matters of church governance. Olson also argues that the district court erred in determining that there are no genuine issues of material fact regarding his claims. We affirm.

FACTS

Appellant Jeremiah Olson began as an assistant pastor at Luther Memorial Church on August 1, 1990. On October 18, 1992, the congregation voted to eliminate the position of assistant pastor. The church claims the position was eliminated for financial reasons. Olson's last Sunday was October 25, 1992.

Olson initiated this action against the church and synod, claiming that he was terminated in retaliation for reporting certain information about the church's senior pastor. Olson brought the following claims: (1) tortious interference with contract, (2) wrongful discharge, (3) promissory estoppel, (4)

implied covenant of good faith and fair dealing, (5) defamation, (6) intentional infliction of emotion distress, (7) violation of the "Whistleblower Statute," and (8) negligent hiring and retention. Olson's contract claims are based on his July 1, 1990, Letter of Call[1] and provisions of the church constitution regarding termination procedures.

The district court granted respondents' motion for summary judgment, concluding that Olson's claims are barred by the First Amendment. In addition, the court concluded that there were not sufficient material facts to support the separate causes of action because: (1) Minnesota has no cause of action for the covenant of good faith and fair dealing, (2) Olson presented no evidence of egregious behavior on the part of the synod or Luther Memorial congregation that would support an intentional infliction of emotional distress claim, and (3) Olson was not within the zone of danger of physical impact and so could not assert a negligent infliction of emotional distress claim. This appeal followed.

DECISION

The First Amendment precludes civil courts from resolving disputes involving churches if "resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity * * *." Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709, 96 S.

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[1] According to respondent Luther Memorial Church, a letter of call is:

> An ecclesiastical offer of employment from a congregation to the pastor. * * * In the letter of call, the congregation sets forth the duties and responsibilities it expects of the Pastor * * * as well as a statement of the congregation's financial and other commitments to the Pastor. The Pastor may freely accept or reject a letter of call.

Ct. 2372, 2380 (1976). However, a "State is constitutionally entitled to adopt neutral principles of law as a means of adjudicating a church property dispute." Jones v. Wolf, 443 U.S. 595, 604, 99 S. Ct. 3020, 3026 (1979). Olson asserts that Jones and other property dispute cases should be applied to breach of contract claims brought by discharged clergy. Neutral principles of law analysis is inappropriate in this case because it does not involve a church property dispute. See Singleton v. Christ the Servant Evangelical Lutheran Church, __ N.W.2d __ (Minn. App. Jan. 9, 1996).

Olson contends that in Black v. Snyder, 471 N.W.2d 715 (Minn. App. 1991), review denied (Minn. Aug. 29, 1991), this court approved a breach of contract claim that did not require inquiry into doctrinal matters. In Black, however, this court determined that the former associate pastor's breach of contract claims were "fundamentally connected to issues of church doctrine and governance and would require court review of the church's motives for discharging" the associate pastor. Id. at 720. Thus, the claims had to be dismissed under Milivojevich. Id.

Relying on Minker v. Baltimore Annual Conference of United Methodist Church, 894 F.2d 1354 (D.C. Cir. 1990), Olson argues that a pastor's breach of contract claim that does not necessarily entangle the court in matters of church doctrine would not be outside the court's jurisdiction. As this court noted in Singleton, Minker involved a motion to dismiss rather than a summary judgment motion, and the court in Minker noted that even though the plaintiff successfully opposed the motion to dismiss, it might be difficult for the plaintiff to avoid summary judgment. Singleton, __ N.W.2d at __. In addition, the exception created in Minker was for an oral contract claim. 894 F.2d at 1361. Olson makes no oral contract claims and thus, even if this court adopted the Minker analysis, his claim would fail.

Implied Covenant of Good Faith and Fair Dealing

Minnesota does not recognize this cause of action in employment disputes. See Hunt v. IBM Mid America Employees Fed. Credit Union, 384 N.W.2d 853, 858 (Minn. 1986).

Contract Claims

Olson's breach of contract, wrongful discharge, and promissory estoppel claims are based on the Letter of Call and the church constitution. Resolution of these issues would require this court to interpret ecclesiastical documents regarding discipline, discharge, and proper expenditure of church funds and thus would be improper under the First Amendment. See Singleton, __ N.W.2d at __.

Defamation

In his complaint, Olson alleged that Bishop Erdahl of the synod made the following "false statements": that Olson was "on leave without call"; that Olson had "physically threatened" him; that Olson was a "troublemaker"; and that Olson and his wife are "pathological" and "obsessive-compulsive." In his brief, Olson indicates that Erdahl stated that Olson would not get another call unless he underwent counseling and that he called two pastors at Salem Lutheran Church and told them not to believe anything Olson said. Because these alleged defamatory statements relate to respondents' reasons and motives for making their employment decisions, such an inquiry is barred by the First Amendment.[2]

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[2] See Black, 471 N.W.2d at 720 (defamation claim based on church's stated reasons for discharge as "inability to conduct her ministry efficiently" would require review of church's reasons for discharging her, and thus was barred); Schoenhals v. Mains, 504 N.W.2d 233 (Minn.

Other Claims

Olson's other claims--intentional infliction of emotional distress, whistleblower, negligent hiring and retention, and tortious interference with contract--would require an even more searching inquiry into the church's and synod's motives, discipline and discharge procedures, and so forth, than would a contract claim and thus are improper under the First Amendment. See Singleton, __ N.W.2d at __.

App. 1993) (defamation action based on statements supporting decision to terminate membership in church barred); Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America, 860 F. Supp. 1194, 1198 (W.D. Ky. 1994) (minister's action against synod, alleging that synod employees made defamatory statements while resolving dispute between minister and his congregation, barred by First Amendment because the action was "the result of a conflict confined within the Reserrection Lutheran Church, concerning the employment relationship of its minister, and addressed in accordance with the church constitution."), aff'd 64 F.3d 664 (1995); Farlev v. Wisconsin Evangelical Lutheran Synod, 821 F. Supp. 1286, 1290 (D. Minn. 1993) (defamation claim would require court to review church's "base for terminating him, an ecclesiastical concern" and the truthfulness of the church's statements).

We conclude that the district court properly determined that Olson's claims are barred by the First Amendment. Thus, we need not determine whether there were any genuine issues of material fact.

Affirmed.

Dated: February 13, 1996

s/s
Judge Roland C. Amundson

STATE OF MINNESOTA

IN SUPREME COURT

C0-95-1623

Jeremiah Olson,

Appellant,

vs.

Luther Memorial Church,

Respondent,

and

St. Paul Area Synod of the Evangelical Church in America,

Respondent.

ORDER

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Jeremiah Olson further review be, and the same is, denied.

Dated: March 19, 1996

BY THE COURT:

s/ AM Keith
Chief Justice

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